



## DISCUSSION

A district court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

Petitioner sets forth the following two claims in his petition: (1) that the California Court of Appeal erroneously ruled that petitioner may not challenge the validity of a 1973 prior conviction, which conviction was used to enhance his sentence on the current conviction, on the grounds that the prior conviction was obtained in violation of his rights under Boykin v. Alabama, 395 U.S. 238, 242-43 (1969); and (2) that his prior conviction in 1973 of residential burglary, used to enhance his current sentence, was obtained in violation of his due process rights, under Boykin, to be informed that his guilty plea constitutes a waiver of the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination.

Petitioner's claims challenging the constitutionality of a prior conviction used as to enhance his sentence are not cognizable. A petitioner challenging in habeas the validity of a prior conviction he maintains is being used as a predicate or enhancement to his current confinement or sentence satisfies the “custody” requirement of § 2254, even if such petitioner is no longer in custody on the prior conviction. See Lackawanna County Dist. Attorney v. Coss, 532 U.S. 394, 401-02 (2001). The Supreme Court has determined, however, that the prior conviction itself cannot be challenged by way of an attack upon the later sentence it was used to enhance. See id., at 403-04 (holding prior conviction cannot be challenged in § 2254 petition); Daniels v. United States, 532 U.S. 374, 382-83 (2001) (holding prior conviction cannot be challenged in § 2255 motion). With respect to state convictions in particular, the Supreme Court has stated:

1 "[O]nce a state conviction is no longer open to direct or collateral attack in  
2 its own right because the defendant failed to pursue those remedies while  
3 they were available (or because the defendant did so unsuccessfully), the  
4 conviction may be regarded as conclusively valid. If that conviction is later  
used to enhance a criminal sentence, the defendant generally may not  
challenge the enhanced sentence through a petition under § 2254 on the  
ground that the prior conviction was unconstitutionally obtained."

5 Coss, 532 U.S. at 403-04 (citation omitted). The only exception to this rule is a claim that  
6 the prior conviction is unconstitutional because of a failure to appoint counsel in violation  
7 of the Sixth Amendment right to counsel as set forth in Gideon v. Wainwright, 372 U.S.  
8 335 (1963). See Coss, 532 U.S. at 404; Daniels, 532 U.S. at 382. Here, petitioner argues  
9 that his 1973 conviction is unconstitutional because he plead guilty to the charges without  
10 having been properly informed of the rights he was waiving. Petitioner does not claim  
11 that he was not provided counsel; indeed, his brief makes clear he in fact had appointed  
12 counsel. Consequently, petitioner's claims, even liberally construed, are not cognizable  
13 herein.

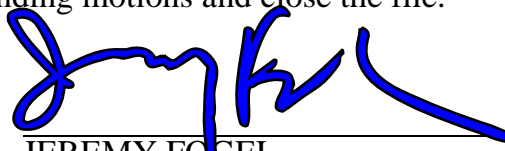
#### 14 CONCLUSION

15 The petition for writ of habeas corpus is DISMISSED for failure to state a  
16 cognizable claim for habeas relief. Petitioner's motions to proceed in forma pauperis  
17 (docket nos. 2 & 5) are GRANTED.

18 The Clerk shall terminate any pending motions and close the file.

19 IT IS SO ORDERED.

20 DATED: 2/22/08

21   
JEREMY FOGEL  
United States District Judge

1 A copy of this ruling was mailed to the following:

2 Eddie Lee Walker.  
3 C-24239  
4 Salinas Valley State Prison  
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6 Soledad, CA 93960  
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